IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4677 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALUBHAI DITIYABHAI GARVALA & 1 - Appellant(s)
Versus
PRANAVBHAI BHADRESHBHAI KAGALVALA & 2 - Defendant(s)

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Appearance :

MR.HIREN M MODI for Appellant(s) : 1 - 2.
None for Defendant(s) : 1 - 2.
MR PV NANAVATI for Defendant(s) : 3,
MR VIBHUTI NANAVATI for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/11/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Mr Hiren M Modi, learned advocate for the appellant seeks leave to reduce the claim in appeal to only Rs.35,000/-. Accordingly, before effective hearing, the claim in appeal for the purposes of court-fees is permitted to be reduced from Rs.1,50,000/- to Rs.35,000/-.

2. The appeal is admitted. Mr Vibhuti P Nanavati, learned counsel who appears for the United India Insurance Co. Ltd. (respondent No.3 herein) at the stage of condonation of delay in filing the present appeal, appears and waives service of notice of admission of the appeal. At the joint request of the learned counsel for the parties, the appeal is taken up for final disposal today.

3. This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and order dated 15.9.2005 of the Motor Accident Claims Tribunal (Aux.), Surat in MAC Petition No.1010 of 1998 for enhancement of the compensation awarded by the Tribunal.

4. On account of the injuries received in a motor vehicle accident which took place on 14.10.1998, a four year old boy Kamlesh- son of appellant Nos.1 and 2 herein, lost his life. The parents of the deceased filed the above-numbered claim petition for compensation of Rs.1,50,000/-, which claim was subsequently raised to Rs.3 lakhs as

per the amendment application moved before the Tribunal. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988.

5. The Tribunal held that the accident was caused by the negligence of the driver of the Honda City car involved in the accident. Since the Tribunal accepted the fact that the deceased was a four year old boy, and was playing on the footpath, the Tribunal had no hesitation in holding that the accident was caused by the sole negligence of the driver of the car.

6. As regards the quantum of compensation, the Tribunal made an award for lumpsum compensation of Rs.1,25,000/-. The parents of the deceased boy are, therefore, in appeal for enhancement of the compensation amount to the extent of RS.35,000/-.

7. Mr Hiren Modi, learned advocate for the appellant-claimants submits that the Tribunal ought to have awarded total compensation of Rs.1,60,000/- because the Legislature has while providing for the structured formula under Section 163A of the Motor Vehicles Act, 1988 which came into force from 14.11.1994 provided that the notional income of even a non-earning minor would be required to be assessed at Rs.15,000/- per annum and deducting one-third amount therefrom as personal expenses on the deceased, the deceased would have been able to provide dependency benefit of Rs.1 lakh to the

parents of the deceased. It is also submitted that multiplier of 15 years would be adopted as per the Second Schedule to the Act and a further sum of RS.10,000/- may be awarded under the head of conventional amount for loss to the estate.

8. Mr Nanavati for the appellant-Insurance Company has opposed the appeal and submitted that the application was under Section 166 of the Act and, therefore, the Tribunal has committed no error in making an award for Rs.1,25,000/- in case of a four year old boy who was obviously not earning anything.

9. Since the accident in question took place in the year 1998, even while deciding the claim petition filed under Section 166 of the Act, the Tribunal could have referred to the Second Schedule to the Motor Vehicles Act, 1988 for the limited purpose of looking at the legislative guideline for assessing notional income of such minor children. It has also been so held in the decision of the Apex Court in **Kaushnuma Begum vs. New India Assurance Co., 2001(1) GLR 593 (Para 22)**, wherein the Apex Court held as under:-

> "In calculating the amount of compensation in this case, we lean ourselves to adopt the structured formula provided in the Second Schedule to the MV Act. Though, it was formulated for the purpose of Sec.163A of the MV Act, we find it a safer guidance for arriving at

the amount of compensation than any other method so far as the present case is concerned."

10. We accordingly assess the notional income of the deceased at Rs.15,000/- per annum. Proceeding on that basis, we find no reason not to accept the appellants' claim for award of Rs.1,60,000/- i.e. Rs.1,50,000/- as loss of dependency benefit and Rs.10,000/- as the conventional amount for loss to the estate. We make it clear that the learned advocate for the appellants has made submissions only for claiming total compensation amount of Rs.1,60,000/- and not any higher amount.

11. The Tribunal has awarded interest at the rate of 9% per annum from the date of the claim petition till realization. We see no reason to award any lower rate of interest on the additional amount being awarded as per this judgment.

12. In view of the above discussion, the appeal is allowed. The award made by the Tribunal is modified by enhancing the amount of compensation from Rs.1,25,000/- to Rs.1,60,000/-. On the additional amount of Rs.35,000/- also, the respondents shall pay interest at the rate of 9% per annum from the date of the claim petition till the date of deposit. The respondents shall also pay proportionate costs of this appeal to the appellants.

Respondent No.3 -United India Insurance Co.

Ltd. shall deposit before the Tribunal the amounts being awarded as per this judgment towards compensation and interest by 30th December 2006. Upon deposit of the amounts, the Tribunal shall pass appropriate orders for investment and disbursement.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

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